

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

IN RE)	
INTEL CORP. MICROPROCESSOR)	MDL No. 05-1717-JJF
ANTITRUST LITIGATION)	
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PHIL PAUL, <i>on behalf of himself</i>)	
<i>and all others similarly situated,</i>)	
<hr/>		
Plaintiffs,)	
<hr/>		
v.)	Civil Action No. 05-485-JJF
<hr/>		
INTEL CORPORATION,)	CONSOLIDATED ACTION
<hr/>		
Defendant.)	
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**NOTICE OF CLASS PLAINTIFFS' RESPONSE TO
DEFENDANT INTEL CORPORATION'S SUPPLEMENTAL FILING**

Intel's reliance on *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955 (2007), is misplaced. That case addressed "the proper standard for pleading an antitrust conspiracy . . ." *Id.* at 1963; *see also id.* at 1964 ("This case presents the . . . question of what a plaintiff must plead in order to state a claim under § 1 of the Sherman Act."). It provides no guidance here in determining the adequacy of Class Plaintiffs' complaint, which alleges that Intel engaged in unlawful monopolization, not an antitrust conspiracy.¹

¹ To be sure, Intel's anticompetitive conduct included agreements with customers and standards-setting bodies that enabled Intel to maintain monopoly power and charge supra-competitive prices in the x86 microprocessor market. *See* FACC ¶¶ 249-51, D.I. 108 in 05-MD-1717. But the complaint pleads these agreements in detail, *see id.* ¶¶ 140-225, and Intel's motion does not argue otherwise. Indeed, as to some of these agreements – those with the five major Japanese OEMs – Intel did not contest the Japan Fair Trade Commission's findings that the agreements existed and violated Japan's Antimonopoly Act. *See id.* ¶¶ 145-49. In contrast, the complaint in

In deciding whether Class Plaintiffs' complaint sufficiently pleads a monopolization claim, this Court should look not to *Twombly* but to cases such as *Brader v. Allegheny Gen. Hosp.*, 64 F.3d 869 (3d Cir. 1995). Intel's challenge to Class Plaintiffs' monopolization claim targets their allegations regarding antitrust injury and standing to sue. On this issue, the Third Circuit Court of Appeals has stated that "the existence of an 'antitrust injury' is not typically resolved through motions to dismiss." *Id.* at 876. As Class Plaintiffs explained in their opposition brief, determining whether consumers in fact paid higher prices than they would have paid but for Intel's unlawful conduct requires expert analysis, supporting data, and other evidence. *See Opp.* at 13. At this stage, it is sufficient that the FACC alleges such higher prices, *see* FACC ¶ 234, which – taken as true – clearly establishes antitrust injury to Class Plaintiffs. *See Allegheny Gen. Hosp. v. Philip Morris, Inc.*, 228 F.3d 429, 439 (3d Cir. 2000).²

The Court should deny Intel's motion to dismiss for the reasons stated in Class Plaintiffs' opposition. As discussed above, *Twombly* does not dictate otherwise.

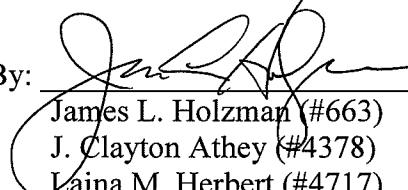
¹ *Twombly* did "not set forth a single fact in a context that suggests an agreement." 127 S. Ct. at 1969.

² Insofar as *Twombly* is premised on the fact that "proceeding to antitrust discovery can be expensive," 127 S. Ct. at 1967, it bears noting that discovery will continue – and will be expensive – with or without Class Plaintiffs, given the existence of AMD's own case against Intel.

Dated: June 4, 2007

PRICKETT JONES & ELLIOTT, P.A.

By:


James L. Holzman (#663)
J. Clayton Athey (#4378)
Laina M. Herbert (#4717)
1310 King Street, Box 1328
Wilmington, DE 19899
jholzman@prickett.com
jcathey@prickett.com
lmherbert@prickett.com
Telephone: (302) 888-6500
Facsimile: (302) 658-8111

Michael D. Hausfeld
Daniel A. Small
Brent W. Landau
COHEN, MILSTEIN, HAUSFELD
& TOLL, P.L.L.C.
100 New York Avenue, NW
Suite 500, West Tower
Washington, DC 20005
Telephone: (202) 408-4600
Facsimile: (202) 408-4699

Michael P. Lehmann
Thomas P. Dove
Alex C. Turan
FURTH LEHMANN & GRANT LLP
225 Bush Street, 15th Floor
San Francisco, CA 94104
Telephone: (415) 433-2070
Facsimile: (415) 982-2076

Steven W. Berman
Anthony Shapiro
HAGENS BERMAN SOBOL
SHAPIRO, LLP
1301 Fifth Avenue, Suite 2900
Seattle, WA 98101
Telephone: (206) 623-7292
Facsimile: (206) 623-0594

Guido Saveri
R. Alexander Saveri
SAVERI & SAVERI, INC.
111 Pine Street, Suite 1700
San Francisco, CA 94111
Telephone: (415) 217-6810
Facsimile: (415) 217-6813

Interim Liaison Counsel for the Class Plaintiffs

Interim Co-Lead Counsel for the Class Plaintiffs

CERTIFICATE OF SERVICE

I, J. Clayton Athey, hereby certify that on this 4th day of June, 2007, I caused the foregoing **Notice of Class Plaintiffs' Response to Defendant Intel Corporation's Supplemental Filing** to be served on the following counsel via electronic filing:

Frederick L. Cottrell, III, Esquire
 Chad Michael Shandler, Esquire
 Steven J. Fineman, Esquire
 Richards, Layton & Finger
 One Rodney Square
 P.O. Box 551
 Wilmington, DE 19899
cottrell@rlf.com
shandler@rlf.com
fineman@rlf.com
Counsel for AMD International Sales & Service LTD and Advanced Micro Devices, Inc.

Adam L. Balick, Esquire
 Bifferato Gentilotti Biden & Balick
 711 North King Street
 Wilmington, DE 19801-3503
abalick@bgbblaw.com
Counsel for AMD International Sales & Service LTD and Advanced Micro Devices, Inc.

Richard L. Horwitz, Esquire
 W. Harding Drane, Jr., Esquire
 Potter Anderson & Corroon, LLP
 1313 N. Market St., Hercules Plaza, 6th Flr.
 P.O. Box 951
 Wilmington, DE 19899-0951
rhorwitz@potteranderson.com
wdrane@potteranderson.com
Counsel for Intel Corporation and Intel Kabushiki Kaisha

Charles P. Diamond, Esquire
 Mark A. Samuels, Esquire
 Linda J. Smith, Esquire
 O'Melveny & Myers LLP
 1999 Avenue of the Stars, 7th Floor
 Los Angeles, CA 90067
CDiamond@omm.com
MSamuels@omm.com
lsmith@omm.com
Counsel for AMD International Sales & Service LTD and Advanced Micro Devices, Inc.

Laurin Grollman, Esquire
 Salem M. Katsh, Esquire
 Kasowitz, Benson, Torres & Friedman LLP
 1633 Broadway
 New York, New York 10019
lgrollman@kasowitz.com
skatsh@kasowitz.com
Counsel for AMD International Sales & Service LTD and Advanced Micro Devices, Inc.

David Mark Balabanian, Esquire
 Joy K. Fuyuno, Esquire
 Bingham McCutchen LLP
 Three Embarcadero Center
 San Francisco, CA 94111-4067
david.balabanian@bingham.com
joy.fuyuno@bingham.com
Counsel for Intel Corporation

Christopher B. Hockett, Esquire
Bingham McCutchen LLP
Three Embarcadero Center
San Francisco, CA 94111
chris.hockett@bingham.com
Counsel for Intel Corporation

Daniel S. Floyd, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California
90071-3197
dfloyd@gibsondunn.com
Counsel for Intel Corporation

Robert E. Cooper, Esquire
Gibson, Dunn & Crutcher LLP
333 South Grand Avenue
Los Angeles, California
90071-3197
rcooper@gibsondunn.com
Counsel for Intel Corporation

Donald F. Drummond, Esquire
Drummond & Associates
One California Street, Suite 300
San Francisco, CA 94111
ballen@drummondlaw.net
Counsel for Dressed to Kill Custom Draperies LLC, Jose Juan, Tracy Kinder and Edward Rush

Darren B. Bernhard, Esquire
Peter E. Moll, Esquire
Howrey LLP
1299 Pennsylvania Ave., N.W.
Washington, DC 20004
Bernhardd@howrey.com
Counsel for Intel Corporation and Intel Kabushiki Kaisha

B.J. Wade, Esquire
Glassman Edwards Wade & Wyatt, P.C.
26 N. Second Street
Memphis, TN 38103
bwade@gewwlaw.com
Counsel for Cory Wiles

Nancy L. Fineman, Esquire
Cotchett, Pitre, Simon & McCarthy
840 Malcolm Road, Suite 200
Burlingame, CA 94010
nfineman@cpsmlaw.com
Counsel for Trotter-Vogel Realty Inc.

Robert D. Goldberg, Esquire
Biggs and Battaglia
921 North Orange Street, P.O. Box 1489
Wilmington, DE 19899
goldberg@batlaw.com
Counsel for Charles Dupraz, Vanessa Z. DeGeorge, Melissa Goeke, Nancy Bjork, James R. Conley, Jeff Vaught, Jim Kidwell, Richard Caplan, Virginia Deering, Ficor Acquisition Co. LLC, Tom Hobbs, David Kurzman, Leslie March, Andrew Marcus, Paula Nardella, Bill Richards, Maria Pilar Salgado, Ron Terranova, Nancy Wolft Ryan James Volden and Carl Yamaguchi

Donald Chidi Amamgbo, Esquire
Amamgbo & Associates, APC
1940 Embarcadero Cove
Oakland, CA 94606
donaldamamgbo@citycom.com
Counsel for Athan Uwakwe

Jeffrey F. Keller, Esquire
Jade Butman, Esquire
Law Offices of Jeffrey F. Keller
425 Second Street, Suite 500
San Francisco, CA 94107
jkeller@jfkellerlaw.com
jbutman@kellergrover.com
*Counsel for David E. Lipton, Maria I. Prohias,
Patricia M. Niehaus, Peter Jon Naigow, Ronld
Konieczka, Steve J. Hamilton, Susan Baxley
and Kevin Stoltz*

Gordon Ball, Esquire
Ball & Scott
550 W. Main Ave., Suite 750
Knoxville, TN 37902
gball@ballandscott.com
*Counsel for Andrew Armbrister and Melissa
Armbrister*

Joseph M. Patane, Esquire
Law Offices of Joseph M. Patane
2280 Union Street
San Francisco, CA 94123
jpatane@tatp.com
*Counsel for Karol Juskiewicz and Lawrence
Lang*

James Gordon McMillan, III, Esquire
Bouchard Margules & Friedlander
222 Delaware Avenue,
Suite 1400
Wilmington, DE 19801
jmcmillan@bmf-law.com
*Counsel for Raphael Allison and Matthew
Kravitz*

Michele C. Jackson, Esquire
Lieff Cabraser Heimann & Bernstein, LLP
Embarcadero Center West, 275 Battery Street,
30th Floor
San Francisco, CA 94111
mjackson@lchb.com
*Counsel for Huston Frazier, Jeanne Cook
Frazier and Brian Weiner*

A. Zachary Naylor, Esquire
Robert Kriner, Jr., Esquire
Robert R. Davis, Esquire
James R. Malone, Jr., Esquire
Chimicles & Tikellis, LLP
One Rodney Square, P.O. Box 1035
Wilmington, DE 19899
zacharynaylor@chimicles.com
robertkriner@chimicles.com
robertdavis@chimicles.com
jamesmalone@chimicles.com

Counsel for Gideon Elliott, Angel Genese, Nir Goldman, Paul C. Czysz, Elizabeth Bruderle Baran, Carroll Cowan, Russell Dennis, Damon DiMarco, Kathy Ann Chapman, Caresse Harms, JWRE Inc., Leonard Lorenzo, Michael E. Ludt, John Maita, Chrystal Moeller, Robert J. Rainwater, Mary Reeder, Stuart Schupler and Sonia Yaco

Ali Oromchian, Esquire
Finkelstein, Thompson & Loughran
601 Montgomery Street, Suite 665
San Francisco, CA 94111
ao@ftllaw.com

Counsel for Ian Walker, Damon DiMarco, Carroll Cowan, Leonard Lorenzo and Russell Dennis

Vincent J. Esades, Esquire
Muria J. Kruger, Esquire
Marguerite E. O'Brien, Esquire
Heins Mills & Olson, P.L.C.
3550 I.D.S. Center
80 S. Eighth Street
Minneapolis, MN 55402
vesades@heinsmills.com
mkruger@heinsmills.com
mobrien@heinsmills.com

Counsel for Bergerson & Associates Inc.

Harry Shulman, Esquire
Robert Mills, Esquire
The Mills Law Firm
145 Marina Boulevard
San Rafeal, CA 94901
harry@millslawfirm.com
deepbluesky341@hotmail.com
Counsel for Stuart Munson

Douglas A. Millen, Esquire
Steven A. Kanner, Esquire
Much Shelist Freed Denenberg Ament & Rubenstein, P.C.
191 North Wacker Drive, Suite 1800
Chicago, IL 60606
dmillen@muchshelist.com
skanner@muchshelist.com
Counsel for HP Consulting Services Inc. and Phillip Boeding

Garrett D. Blanchfield, Jr., Esquire
Mark Reinhardt, Esquire
Reinhardt Wendorf & Blanchfield
332 Minnesota Street, Suite E-1250
St. Paul, MN 55101
g.blanchfield@rwblawfirm.com
mreinhardt@comcast.net
Counsel for Susan Baxley

Hollis L. Salzman, Esquire
Kellie Safar, Esquire
Goodking Labaton Rudoff & Sucharow, LLP
100 Park Avenue
New York, NY 10017
hsalzman@labaton.com
ksafar@labaton.com
Counsel for Angel Genese, Gideon Elliott and Nir Goldman

Jason S. Kilene, Esquire
Daniel E. Gustafson, Esquire
Gustafson Gluek PLLC
650 Northstar East, 608 Second Avenue South
Minneapolis, MN 55402
jkilene@gustafsongluek.com
dgustafson@gustafsongluek.com
Counsel for Fiarmont Orthopedics & Sports Medicine PA

Lance A. Harke, Esquire
Harke & Clasby
155 S. Miami Avenue
Miami, FL 33130
lharke@harkeclasby.com
Counsel for Nathaniel Schwartz and Maria I. Prohias

Bruce J. Wecker, Esquire
Hosie McArthur LLP
One Market Street
Spear Street Tower #2200
San Francisco, CA 94105
bwecker@hosielaw.com
Counsel for Dwight E. Dickerson

Francis O. Scarpulla, Esquire
Law Offices of Francis O. Scarpulla
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
foslaw@pacbell.net
Counsel for Lazio Family Products, Law Offices of Laurel Stanley, William F. Cronin, Michael Brauch and Andrew Meimes

R. Bruce McNew, Esquire
Taylor & McNew, LLP
3711 Kennett Pike, Suite 210
Greenville, DE 19807
mcnew@taylormcnew.com
Counsel for Robert Marshall

Ian Otto, Esquire
Nathan Cihlar, Esquire
Straus & Boies, LLP
4041 University Drive, 5th Floor
Fairfax, VA 22030
dboies@straus-boies.com
Counsel for Dressed to Kill Custom Draperies LLC, Jose Juan, Edward Rush and Tracy Kinder

Allan Steyer, Esquire
Steyer Lowenthal Boodrookas Alvarez & Smith LLP
One California Street, Third Floor
San Francisco, CA 94111
asteyer@steyerlaw.com
Counsel for Cheryl Glick-Salpeter, Jay Salpeter, Jodi Salpeter and Michael H. Roach

Mario Nunzio Alioto, Esquire
Trump Alioto Trump & Prescott LLP
2280 Union Street
San Francisco, CA 94123
malioto@tatp.com
Counsel for Karol Juskiewicz and Lawrence Lang

Steven A. Asher, Esquire
Robert S. Kitchenoff, Esquire
Weinstein Kitchenoff & Asher, LLC
1845 Walnut Street, Suite 1100
Philadelphia, PA 19103
asher@wka-law.com kitchenoff@wka-law.com
Counsel for Joseph Samuel Cone

Francis A. Bottini, Jr., Esquire
Wolf Haldenstein Adler Freeman & Herz
750 B Street, Suite 2770
San Diego, CA 92101
bottini@whafh.com

Counsel for Ryan James Volden, Ficor Acquisition Co LLC, Giacobbe-Fritz Fine Art LLC, Andrew Marcus, Bill Richards, Carl Yamaguchi, Charles Dupraz, David Kurzman, James R. Conley, Jeff Vaught, John Matia, Kathy Ann Chapman, Caresse Harms, JWRE Inc., Jim Kidwell, John Maita, Leslie March, Maria Pilar Salgado, Melissa Goeke, Nancy Bjork, Nancy Wolfe, Paula Nardella, Richard Caplan, Ron Terranova, Tom Hobbs, Vanessa Z. DeGeorge, Virginia Deering, Chrystal Moeller, Robert J. Rainwater, Mary Reeder and Sonia Yaco

Edward A. Wallace, Esquire
The Wexler Firm LLP
One N. LaSalle Street, Suite 2000
Chicago, IL 60602
eawallace@wexlerfirm.com
Counsel for Peter Jon Naigow

Jason S. Hartley, Esquire
Ross, Dixon & Bell LLP
550 West B Street, Suite 400
San Diego, CA 92101
jhartley@rdblaw.com
Counsel for Gabriella Herroeder-Perras

Fred Taylor Isquith, Esquire
Adam J. Levitt, Esquire
Wolf Haldenstein Adler Freeman & Herz
270 Madison Ave., 11th Floor
New York, NY 10016
isquith@whafh.com
levitt@whafh.com

Counsel for Ryan James Volden, Ficor Acquisition Co LLC, Giacobbe-Fritz Fine Art LLC, Andrew Marcus, Bill Richards, Carl Yamaguchi, Charles Dupraz, David Kurzman, James R. Conley, Jeff Vaught, John Matia, Kathy Ann Chapman, Caresse Harms, JWRE Inc., Jim Kidwell, John Maita, Leslie March, Maria Pilar Salgado, Melissa Goeke, Nancy Bjork, Nancy Wolfe, Paula Nardella, Richard Caplan, Ron Terranova, Tom Hobbs, Vanessa Z. DeGeorge, Virginia Deering, Chrystal Moeller, Robert J. Rainwater, Mary Reeder and Sonia Yaco

Jeffrey S. Goddess, Esquire
Rosenthal, Monhait, Gross & Goddess
Mellon Bank Center, Suite 1401
P.O. Box 1070
Wilmington, DE 19899
jgoddess@rmgglaw.com
Counsel for Ludy A. Chacon, Joseph Samuel Cone, Darice Russ and Michael K. Simon

Craig C. Corbitt, Esquire
Zelle, Hofmann, Voelbel, Mason & Gette LLP
44 Montgomery Street, Suite 3400
San Francisco, CA 94104
ccorbitt@zelle.com
Counsel for William F. Cronin, Law Offices of Laurel Stanley and Lazio Family Products

Eugene A. Spector, Esquire
William G. Caldes, Esquire
Spector Roseman & Kodroff, P.C.
Suite 2500
1818 Market Street
Philadelphia, PA 19103
espector@srk-law.com
bcaldes@srk-law.com
Counsel for David Arnold, Andrew S. Cohn, Jason Craig, Maria Griffin, Lena K. Manyin, Paul Ramos and Michael Ruccolo

Juden Justice Reed, Esquire
Schubert & Reed LLP
Two Embarcadero Center, Suite 1600
San Francisco, CA 94111
jreed@schubert-reed.com
Counsel for Patrick J. Hewson

Russell M. Aoki, Esquire
Aoki Sakamoto Grant LLP
One Convention Place
701 Pike Street, Suite 1525
Seattle, WA 98101
russ@aoki-sakamoto.com
Counsel for Kevin Stoltz

Richard A. Ripley, Esquire
Bingham McCutchen
1120 20th Street, NW, Suite 800
Washington, DC 20036
richard.ripley@bingham.com
Counsel for Intel Corporation

Donald L. Perelman, Esquire
Fine Kaplan & Black, RPC
1835 Market Street, 28th Flr
Philadelphia, PA 19103
dperelman@finekaplan.com
Counsel for Kevin Stoltz

Scott E. Chambers, Esquire
Schmittinger & Rodriguez, P.A.
414 S. State Street
P.O. Box 497
Dover, DE 19903
Counsel for David Arnold, Andrew S. Cohn, Jason Craig, Maria Griffin, Lena K. Manyin, Paul Ramos and Michael Ruccolo

Natalie Finkelman Bennett, Esquire
Shepherd, Finkelman, Miller & Shah
65 Main Street
Chester, CT 06412-1311
nfinkelman@classactioncounsel.com
Counsel for Judy A. Chacon

Michael L. Kirby, Esquire
Kirby Noonan Lance & Hoge LLP
One America Plaza
600 West Broadway, Suite 1100
San Diego, CA 92101
mkirby@knlh.com
Counsel for Justin Suarez

Jeffrey A. Bartos, Esquire
Guerrieri, Edmond, Clayman & Bartos, PC
1625 Massachusetts Avenue, NW
Washington, DC 20036
jbartos@geclaw.com
Counsel for Jose Juan, Dressed to Kill Custom Draperies, LLC, Tracy Kinder and Edward Rush

Randy R. Renick, Esquire
Law Offices of Randy Renick
128 North Fair Oaks Avenue, Suite 204
Pasadena, CA 91103
rrr@renicklaw.com
Counsel for Shanghai 1930 Restaurant Partners L.P. and Major League Softball Inc.

Daniel Hume, Esquire
Kirby McInerney & Squire LLP
830 Third Avenue, 10th Floor
New York, NY 10022
dhume@kmslaw.com

Counsel for Raphael Allison and Matthew Kravitz

Scott Ames, Esquire
Serratore & Ames
9595 Wilshire Blvd., Suite 201
Los Angeles, CA 90212
scott@serratoreames.com
Counsel for Major League Softball, Inc.

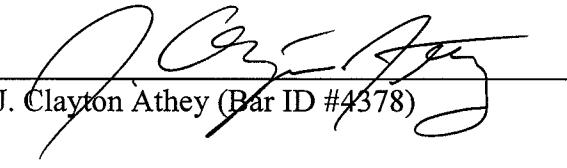
Douglas G. Thompson, Jr., Esquire
Finkelstein, Thompson & Loughran
1050 30th Street N.W.
Washington, DC 20007
dgt@ftllaw.com
Counsel for Ian Walker, Damon DiMarco, Carrol Cowan, Leonard Lorenzo and Russell Dennis

Reginald Von Terrell, Esquire
The Terrell Law Group
223 25th Street
Richmond, CA 94804
REGGIET2@aol.com
Counsel for Athan Uwakwe

Daniel B. Allanoff, Esquire
Steven Greenfogel, Esquire
Meredith Cohen Greenfogel & Skirnick, P.C.
22nd Floor, Architects Building
117 S. 17th Street
Philadelphia, PA 19103
dallanoff@mcgslaw.com
sgreenfogel@mcgslaw.com
Counsel for Benjamin Allanoff

Harvey W. Gurland, Jr., Esquire
Duane Morris
200 S. Biscayne Blvd., Suite 3400
Miami, FL 33131
HWGurland@duanemorris.com
Counsel for Intel Corporation

Barbara C. Frankland, Esquire
Rex A. Sharp, Esquire
Gunderson Sharp & Walke, L.L.P.
5301 W. 75th Street
Prairie Village, KS 66208
bfrankland@midwest-law.com
rsharp@midwest-law.com
Counsel for Marvin D. Chance, Jr.


J. Clayton Athey (Bar ID #4378)